

財經事務及庫務局
(庫務科)

香港下亞厘畢道
中區政府合署

FINANCIAL SERVICES AND THE
TREASURY BUREAU
(The Treasury Branch)

Central Government Offices,
Lower Albert Road,
Hong Kong

傳真號碼 Fax No. : 2868 5279
電話號碼 Tel. No. : 2810 2229
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17 April 2003

Ms Monna LAI
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2877 5029)

Dear Ms LAI,

Stamp Duty (Amendment) Bill 2002

Thank you for your letter of 10 April 2003. The Administration's response to your question is set out in the ensuing paragraphs.

The proposal to empower the Collector to request for an instrument for inspection at any time after an application for stamping is made, both before or after the issuance of the stamp certificate, is put forward for revenue protection purpose. In cases where the Collector is doubtful about the contents of the instrument (e.g. stated consideration), it is necessary to examine the instrument in order to ascertain the stamp duty liability. Under the Stamp Duty Ordinance (Cap. 117) ("the Ordinance"), a duty payer may apply for stamping a chargeable instrument at any time after its execution. The application may even be made after the statutory period with payment of a late penalty. It is therefore possible that applications for stamping are made after the 6 years statutory period for recovery of unpaid or underpaid stamp duty. Thus, it is not practicable to set a time limit on the Collector's power to request for inspection of the instrument. For the same reason, no time limit is set on the power of the Collector to call for an abstract of the relevant instrument and evidence in the conventional stamping system as

provided under section 12 of the Ordinance. Similarly, there is also no time limit for the Collector to adjudicate an instrument under section 13 of the Ordinance.

We would like to take this opportunity to clarify a point raised by you during the meeting of the Bills Committee on 11 April 2003. Our views regarding “error” in a stamp certificate under section 18J(1)(c) were set out in our letter to you dated 18 March 2003. In our subsequent letter of 9 April 2003, we responded to your previous concerns and elaborated our views by quoting the example of a case where the consideration was subsequently found inadequate. Please note that the stamp certificate may contain other errors as to the name of parties, description of properties, etc. and we have no intention to restrict an error to the amount of consideration only. The Administration has not changed the position on the general interpretation of “error” in a stamp certificate under section 18J(1)(c).

Please feel free to contact me if you have any question related to this reply.

Yours sincerely,

(Ivanhoe Chang)
for Secretary for Financial Services and the Treasury

cc.	Secretary for Justice	(Attn.: Ms Lonnie NG)
		(Attn.: Mr M Y CHEUNG)
	Commissioner of Inland Revenue	(Attn.: Miss Mary WONG)
	Clerck to Bills Committee	(Attn.: Ms Cindy CHENG)